

Flournoy Properties Inc.



900 BROOKSTONE CENTRE PKWY. / P. O. BOX 6566 / COLUMBUS GA 31907-0422 / (706) 324-4000

FAX (706) 596-2495

EX PARTE OR LATE FILED

July 8, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: Restrictions on Over-The-Air Reception Devices, CS Docket No. 96-83; and
Preemption of Local Zoning Regulation of Satellite Earth Stations, IB Docket No.
95-59

Dear Mr. Caton:

We write to request clarification regarding the possible effect on our business of the rules proposed in the above dockets. An original and 13 copies of this letter are enclosed for filing in the record. We understand that the proposed rules would invalidate "nongovernmental restrictions" that "impair" a viewer's ability to receive video programming over the air, through a wireless cable or similar system, or by direct broadcast satellite.

Flournoy Properties, Inc. owns and or manages multi-unit, residential apartment buildings. Consequently, we have entered into **thousands** of leases with our residents. We are concerned that our leases might contain terms that are "nongovernmental restrictions" that "impair" viewing, but we do not know how the proposed rules would be applied. This uncertainty could very well create unnecessary disputes with our residents.

We would appreciate your guidance in determining which provisions of our lease contain terms that might be considered "nongovernmental restrictions" or "impairments" under the rules you propose in our circumstances.

Mr. William F. Caton

July 8, 1996

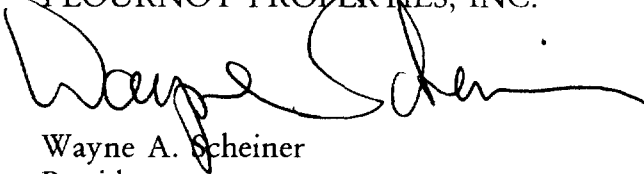
Page 2

Accordingly, we enclose a copy of one of our representative lease forms. Please read it and let us know which terms of the enclosed form would violate either of the proposed rules.

Thank you for your assistance.

Sincerely,

FLOURNOY PROPERTIES, INC.

A handwritten signature in black ink, appearing to read "Wayne A. Scheiner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Wayne A. Scheiner
President

WAS/bh

Enclosures

**FLOURNOY
PROPERTIES, INC.**

LEASE AGREEMENT

This Lease Agreement, made this _____ day of _____, 19____, WHISPERWOOD SPA & CLUB, a Limited Partnership, d/b/a WHISPERWOOD SPA & CLUB APARTMENTS, 6029 Flat Rock Road, Columbus, Georgia 31907, hereinafter referred to as "Lessor" acting through FLOURNOY PROPERTIES, INC., duly authorized Agent, hereinafter referred to as "Management", and _____, hereinafter referred to as "Resident".

All other occupants living with Resident are: _____

Name: _____	DOB: _____
Name: _____	DOB: _____
Name: _____	DOB: _____
Name: _____	DOB: _____

WHEREAS, the Lessor agrees to lease the below-described premises to the Resident, and the Resident agrees to lease from the Lessor, Apartment Number _____. If Resident is more than one person, then each person constituting Resident shall be jointly and severally liable under the terms and conditions of this Lease for the performance of all the provisions of this Lease by Resident.

1. TERM: The term of this lease shall be for _____, beginning _____, 19____, and ending _____, 19____, at 12 Midnight.

2. POSSESSION: If there is a delay in delivery of possession by Management, rent shall be abated on a daily basis until possession is granted. If possession is not granted within seven (7) days after the beginning day of term, then Resident may void this Agreement and have full refund of deposit. Management shall not be liable for damages for delay in delivery of possession.

3. RENT: The total rent due under this lease is \$ _____. Resident agrees to pay this amount in monthly installments of \$ _____ beginning on the first day the lease begins with succeeding payments due on the first day of each month during the term of the lease. If the lease term begins before or after the first day of the month, Resident agrees to pay in advance prorata rent in the amount of \$ _____. This prorata rent is for the first month only. Payments shall be made at the office of Management or such other place as Management may designate. If an apartment is rented by more than one person, the Residents agree that they will work out the details of dividing rental payments and/or any security deposit refunds among themselves. Residents agree they will make one rental payment to office. Management may pay the security refunds to any Resident identified above. Management and Resident(s) agree that the following sums of money shall be paid to Management prior to Resident(s) taking possession of the premises described in this lease.

(a) ONE MONTH'S RENT IN ADVANCE _____	DOLLARS (\$ _____)
(b) PARTIAL PRORATA MONTHLY RENTAL IN ADVANCE _____	DOLLARS (\$ _____)
(c) APPLICATION AND PROCESSING FEE _____	DOLLARS (\$ _____)
(d) SECURITY DEPOSIT _____	DOLLARS (\$ _____)
(e) OTHER _____	DOLLARS (\$ _____)
TOTAL DUE MANAGEMENT IN ADVANCE _____	DOLLARS (\$ _____)

4. LATE CHARGE AND RETURNED CHECKS: Time is of the essence of this Agreement and if Management elects to accept rent after the 5th day of the month, a late charge of 10% will be due. In the event any check given by Resident to Management is returned to bank unpaid, Resident shall pay to Management a handling charge of \$ _____. This charge will be waived if the bank verifies, in writing, the check was returned due to their error. All late and returned check payments must be made by certified check or money order.

5. APPLICATION & PROCESSING CHARGE: Upon execution of this Lease Agreement, Resident agrees to pay an application/processing fee in the amount of \$ _____. This fee is non-refundable.

6. SECURITY DEPOSIT: Resident agrees to deposit \$ _____ with Management before taking possession of the apartment as security for Resident's fulfillment of conditions of this Agreement. Deposit will be returned to Resident within Thirty (30) days after apartment is vacated if:

- (a) Entire length of the lease term has expired; and
- (b) All monies due Management by Resident have been paid; and
- (c) Apartment is not damaged and is left in its cleaned and original condition, normal wear and tear excepted; and
- (d) No default exists as defined by paragraph 25 of the Lease Agreement.

Deposit may be applied by Management to satisfy all or part of Resident's obligations and such act will not prevent Management from claiming damages in excess of the deposit. Resident agrees not to apply the deposit to any rent payment, and also agrees to pay Fifty Dollars (\$50.00) for re-keying locks if all keys are not returned. Resident's security deposit will be deposited by Management in escrow Bank Account No. 23-09-998 Columbus Bank & Trust Co., Columbus, Georgia. Resident acknowledges that he has been given a list of any existing damages to apartment; given the right to inspect same, and has approved said list except as previously specified in writing to Management. The list of any existing damages which Resident inspects and approves is referred to as the Move-In, Move-Out Inspection Report and is hereto made a part of this lease.

7. DISCLOSURE: Flournoy Properties, Inc., of 900 Brookstone Centre Pkwy., Columbus, Georgia 31904 is authorized to act on behalf of Lessor with respect to this Agreement, to manage the premises, and its Management's duly designated agent for service of process with respect to any matter arising under this Agreement.

8. EXTENDED TERMS: Either party may terminate this Agreement at the end of the term by giving the other party thirty (30) days written notice prior to the end of the term, but if no such notice is given by either party, then this Agreement will be automatically extended until terminated by either party upon thirty (30) days written notice. Management may increase the monthly rental in effect during any extended term by giving Resident written notice thereof of at least thirty (30) days before the date on which such monthly increase shall take effect.

9. EARLY TERMINATION: Resident may terminate this Agreement before the expiration of the term by:

- (a) Giving Management thirty (30) days written notice; plus
- (b) Paying all monies due through date of termination; plus
- (c) Paying an amount equal to the number of days the apartment remains vacant up to one month's rent as a cancellation fee.

10. NO ASSIGNMENT OR SUBLETTING: Resident may not sub-let apartment or assign this lease without the written consent of Management.

11. UTILITIES: Resident shall exercise due diligence in conserving gas, electricity and water. If the leased premises are not presently individually metered for gas or electricity, or water and sewer, the parties hereto agree that the Lessor may at any time during the term hereof or otherwise, install individual meters for gas or electricity, or water and sewer. The rent shall be adjusted in accordance with published utility allowances as established by the local housing authority and/or as reasonably determined by the Landlord, and the Resident shall thereafter assume the liability for the payment of the utility charges. In the event that Resident is or becomes responsible for the cost of furnishing and utilizing any or all of the following utilities: water/sewer, gas and/or electricity to the premises, Resident agrees to continuously supply water/sewer, gas and/or electricity to the leased premises. Resident hereby acknowledges that failure to do so may cause damages to the premises and shall constitute an immediate default of this Lease Agreement. Resident shall further make all necessary deposits required by utility companies supplying said utility services to the leased premises. It is understood that Resident shall promptly pay when due any and all bills for water/sewer, gas and/or electricity utilized in the leased premises, if not included in the rent. Resident shall not install any additional utility consuming apparatus without the prior written consent of the Lessor or Management. In the event of non-payment for said utility charges, when due shall be a default under the terms of this Lease Agreement and shall entitle Lessor, at its sole option, to immediate possession of the apartment and to all other rights upon default under this Agreement. Resident further indemnifies Lessor and Management for any and all damages and all loss in connection therewith.

12. FIRE: If apartment is made uninhabitable by fire or other casualty, not the fault of Resident, this Agreement shall be terminated.

13. HOLD OVER: Resident shall deliver possession of apartment in good order and repair to Management upon termination or expiration of this Agreement.

14. RIGHT OF ACCESS: Management may enter the apartment without notice to Resident for inspection and maintenance during reasonable hours. In case of emergency, Management may enter at any time.

15. USE: Apartment shall be used for residential purposes only and shall be occupied only by persons named in Resident's application to rent. Apartment shall be used as to comply with all state, county and municipal laws and ordinances and shall be kept in a clean and orderly condition. Resident shall not use apartment or permit it to be used for any disorderly or unlawful purpose or in any manner so as to interfere with other Residents' quiet enjoyment of their apartments.

16. PROPERTY LOSS: Management shall not be liable for damage to Resident's personal property, except where such damage is due to Management's negligence. Management encourages Resident to obtain insurance on personal property for protection from loss due to fire, flooding, or other events that could damage Resident's personal property.

17. PETS: No animals, birds or pets of any kind shall be permitted in apartment without written consent of Management. (See attached Pet Addendum if applicable.)

18. **INDEMNIFICATION:** Resident releases Lessor and Management from liability for and agrees to indemnify Lessor and Management against all losses incurred by Management as a result of (a) Resident's failure to fulfill any condition of this Agreement; (b) any damage or injury happening in or about apartment or premises to Resident's invitees or licensees or such person's property solely as a result of the Resident's negligence; (c) Resident's failure to comply with any requirements imposed by any governmental authority; and (d) any judgement, lien or other encumbrance filed against apartments as a result of Resident's action.

19. **FAILURE OF MANAGEMENT TO ACT:** Failure of Management to insist upon strict compliance with the terms of this Agreement shall not constitute a waiver of Management's rights to act on any violation.

20. **REMEDIES CUMULATIVE:** All remedies under this Agreement or by law or equity shall be cumulative. If a suit for any breach of this Agreement establishes a breach by Resident, Resident shall pay to Management all expenses incurred in connection therewith.

21. **NOTICES:** Any notice required by this Agreement shall be in writing and shall be deemed to be given if delivered personally or mailed by registered or certified mail.

22. **REPAIRS:** Resident accepts apartment in "as is" condition as suited for the use intended. Resident understands and agrees that the apartment, equipment and fixtures will be under the control of Resident and agrees to keep said apartment together with the fixtures therein, in a clean, sightly and sanitary condition. Management will make necessary repairs to apartment with reasonable promptness after receipt of written notice from Resident. If any damage, beyond normal wear and tear, is caused by Resident or his guest, Resident agrees to pay Management the cost of repair with the next rent payment. Resident may not remodel or structurally change apartment, nor remove any fixture therefrom.

23. **ABANDONMENT:** If Resident removes or attempts to remove property from the premises other than in the usual course of continuing occupancy, without having first paid Management all monies due, apartment may be considered abandoned, and Management shall have the right to store or dispose of any of Resident's property left on the premises by Resident by means of the Distressed Warrant procedures in accordance with Georgia Code 44-7-70. Management shall also have the right to store or dispose of any of Resident's property remaining on the premises after the termination of this Agreement. Any such property shall be considered Management's property and title thereto shall vest in Management. Management shall also have the right to re-rent apartment after Resident abandons same.

24. **MORTGAGEE'S RIGHTS:** Resident's rights under this lease shall at all times be automatically junior and subject to any deed to secure debt which is now or shall hereafter be placed on premises of which apartment is a part; if requested, Resident shall execute promptly any certificate that Management may request to specifically implement the subordination of this paragraph.

25. **DEFAULT BY RESIDENT:** Any breach or violation of any provision of this Agreement by Resident or any untrue or misleading information in Resident's rental application shall give Management the right to terminate this Agreement or to take possession and hold Resident liable for the remainder of the term.

26. **RULES AND REGULATIONS:**

(a) **Signs:** Residents shall not display any signs, exterior lights or markings on apartments. No awnings or other projections shall be attached to the outside of the building of which apartment is a part.

(b) **Locks:** Resident is prohibited from adding locks to, changing or in any way altering locks installed on the doors of apartment, without written permission of Management.

(c) **Entrances, Hallways, Walks and Lawns:** Entrances, hallways, walks, lawns and other public areas shall not be obstructed or used for any purpose other than ingress and egress.

(d) **Antennas:** Radio or television aerials shall not be placed or erected on the roof or exterior of buildings.

(e) **Parking:** Resident agrees to abide by the parking regulations established by Management. If Management has designated spaces for Resident to park or areas for boats, trailers, campers or other vehicles, Resident agrees to park only in those spaces so designated. Non-operative vehicles are not permitted on premises. Any such non-operative vehicle may be removed by Management at the expense of Resident owning same, for storage or public or private sale at Management's option, and Resident owning same shall have no right for recourse against Management therefor. Parking lot area is not to be used for any major car repairs since automotive repairs are not permitted on the premises.

(f) **Storage:** No goods or materials of any kind or description which are combustible or would increase fire risk shall be taken or placed in storage areas. Storage in such areas shall be at Resident's risk and Management shall not be responsible for any loss or damage.

(g) **Walls:** No nails, screws or adhesive hangers except standard picture hooks, shade brackets and curtain rod brackets may be placed in walls, woodwork or any part of apartment.

(h) **Balcony or Patio:** Balcony or patio shall be kept neat and clean at all times. No rugs, towels, laundry, clothing or other items shall be stored, hung or draped on railings or other portions of balcony or patio.

(i) **Recreation and Service Areas:** Resident agrees to abide by rules and regulations established for use of recreational and service facilities provided by Management.

(j) **Guests:** Resident shall be responsible and liable for the conduct of his guests. Acts of guests in violation of this Agreement or Management's rules and regulations may be deemed by Management to be a breach by Resident.

(k) **Drapes and Shades:** All drapes and shades installed by Resident must be lined in white to present a uniform exterior appearance.

(l) **Water Beds:** Resident may have or keep water beds in the apartment provided the flotation bedding system meets applicable building codes. Resident shall provide Management with a flotation insurance policy to protect the Resident and the Management against personal injury or property damage.

(m) All other rules and regulations Management may hereafter, from time to time, adopt and promulgate for the operation and management, are hereby made a part of this lease and shall, during the term hereof, be in all instances observed and performed by Resident. Resident does hereby accept and agree to abide by and uphold the Rules and Regulations.

27. **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in this state. Additional information regarding radon and radon testing may be obtained from your county public health unit.

28. **RECEIVING ROOM:** In the event that the Lessor and/or Management establish a "Receiving Room" for the receiving and delivery of packages, parcels and the like, for and on behalf of the resident(s), excluding certified or registered mail (which will not be accepted by the property), then the Resident(s), at their sole risk, may utilize the same together with any service that may be supplied by the operator thereof. It is agreed and understood that the Lessor or Management assumes no liability for any package, parcel, etc. left therein or for the delivery of the same.

29. **ATTORNEY'S FEES, COSTS, AND WAIVER OF EXEMPTIONS:** If the Resident defaults in its performance hereunder or fails to comply with any Agreements, provisions or Addendums of this Lease, Resident shall pay the attorney's fees incurred by Lessor in enforcing such Agreements, provisions or Addendums as deemed reasonable. Resident hereby waives any and all rights to claim personal property exempt from levy and sale, and grants Management interest in all of Resident's personal property in and about the premises at any time during residential period, whether now or hereafter acquired.

30. **SEVERABILITY:** Should any portion or provision of this Lease Agreement be deemed invalid by a court of law, the validity of the remainder of this Agreement shall not be affected.

31. **ENTIRE AGREEMENT:** This Lease Agreement and any attached addendums constitute the entire Agreement between the parties and no oral statements shall be binding.

32. **SPECIAL STIPULATIONS:** The following special stipulations shall control in the event of conflict with any of the foregoing:

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed in person or by a person duly authorized, the day and year first above written.

FLOURNOY PROPERTIES, INC.

Management

Resident